Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 7 FEBRUARY 14, 1973 No. 7

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DEPARTMENT OF THE TREASURY
Bureau of Customs

NOTICE

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Bureau of Customs

(T.D. 73–35)

Tariff classification—Vitamin B–12

Approval of practice of classification of vitamin B–12 produced without the use of benzenoid percursors under the provision for synthetic vitamins in item 437.82, Tariff Schedules of the United States. Complaint of American wholesaler under section 516, Tariff Act of 1930, as amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

In a letter of August 16, 1971, H. Reisman Corporation, an American wholesaler of vitamin B–12, through its attorneys, protested the Bureau ruling, abstracted as Treasury Decision 66–88(52), which classified vitamin B–12 made without the use of benzenoid precursors under the provision for synthetic vitamins in item 437.82, Tariff Schedules of the United States (TSUS).

The complainant was informed that its complaint was considered, but on the basis of the evidence of record, the Bureau was satisfied that vitamin B–12 produced in the manner described was correctly classifiable in item 437.82, TSUS.

In accordance with the provisions of section 516(c), Tariff Act of 1930, as amended, notice is hereby given that the named domestic wholesaler has given the notice contemplated by statute that he desires to contest the classification of vitamin B–12 made without the use of benzenoid sources. However, under section 516(d), Tariff Act of 1930, as amended, the practice of classifying vitamin B–12 made without the use of benzenoid precursors under item 437.82, TSUS, will be continued so long as no decision of the United States Customs Court or the United States Court of Customs and Patent Appeals not in harmony with this decision is published.

(412.6)

EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved January 22, 1973:

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[Published in the Federal Register January 31, 1973 (38 F.R. 2991)]

(T.D. 73-36)

Reimbursable services—Excess cost of preclearance operations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 24, 1973.

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the bi-weekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning February 4, 1973.

Installation	*Bi-weekly excess cost*
Montreal, Canada	$3,270.00
Toronto, Canada	7,717.00
Kindley Field, Bermuda	1,570.00
Nassau, Bahama Islands	3,504.00
Vancouver, Canada	1,073.00
Winnipeg, Canada	459.00

(140.57)

VERNON D. ACREE,
Commissioner of Customs.

[Published in the Federal Register January 31, 1973 (38 F.R. 2991)]

(T.D. 73-37)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products in certain categories, manufactured or produced in Romania

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 29, 1973.

There are published below the directives of December 11 and 21, 1972, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry in the United States of cotton textiles and cotton textile products in certain categories, manufactured or produced in Romania. The directive of December 11, 1972, amends the level of restraint for category 60 contained in the directive of December 13, 1971, from the Chairman, President's Cabinet Textile Advisory Committee (T.D. 72-36).

These directives were published in the Federal Register of December 13, 1972 (37 F.R. 26543), and January 3, 1973 (38 F.R. 75), by the Committee.

(343.3)

G. R. DICKERSON,
Assistant Commissioner,
Office of Operations.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 11, 1972.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20226

DEAR MR. COMMISSIONER:

On December 13, 1971 the Chairman, President's Cabinet Textile Advisory Committee, directed you to prohibit entry during the twelve-month period beginning January 1, 1972 of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in Romania, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraph 4 of the bilateral cotton textile agreement of December 31, 1970, between the Governments of the United States and Romania, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to amend, effective as soon as possible, the level of restraint established in the aforesaid directive of December 13, 1971 for cotton textile products in Category 60 to 21,218 dozen for the twelve-month period beginning January 1, 1972.

The actions taken with respect to the Government of Romania and with respect to imports of cotton textile products from Romania have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions fall within the

[1] The term "adjustment" refers to those provisions of the bilateral cotton textile agreement of December 31, 1970 between the Governments of the United States and Romania which provide in part that within the aggregate, limits on certain categories may be exceeded by not more than five (5) percent; for limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely yours,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary and Director, Bureau of Resources and Trade Assistance

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THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230
COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 21, 1972.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20226

DEAR MR. COMMISSIONER:

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of December 31, 1970, between the Governments of the United States and the Socialist Republic of Romania, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective January 1, 1973 and for the twelve-month period extending through December 31, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 19, 26, 47, 49, 55, 60, and 63, produced or manufactured in Romania, in excess of the following twelve-month levels of restraint:

Category	*Twelve-Month Level of Restraint*
19	1,212,750 square yards
26	2,425,500 square yards (of which not more than 551,250 square yards may be in duck fabric [1])
47	44,724 dozen
49	23,746 dozen
55	15,132 dozen
60	21,218 dozen
63	383,478 pounds

[1] The T.S.U.S.A. Nos. for duck fabric are:

320.—01 through 04, 06, 08	326.—01 through 04, 06, 08
321.—01 through 04, 06, 08	327.—01 through 04, 06, 08
322.—01 through 04, 06, 08	328.—01 through 04, 06, 08

In carrying out this directive, entries of cotton textile products in Categories 19, 26, 47, 49, 55, 60, and 63, produced or manufactured in Romania, which have been exported to the United States from Romania prior to January 1, 1973, shall, to the extent of any unfilled balances be charged against the levels of restraint established for such goods for the twelve-month period beginning January 1, 1972, and extending through December 31, 1972. In the event that the levels of restraint for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of December 31, 1970, between the Governments of the United States and the Socialist Republic of Romania which provide in part that within the aggregate limit, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on April 29, 1972 (37 F.R. 8802).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of cotton textiles and cotton textile products from Romania have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary and Director, Bureau of Resources and Trade Assistance

(T.D. 73–38)

Cotton and wool textiles—Restriction on entry

Restriction on entry of cotton and wool textile products in certain categories, manufactured or produced in the Republic of China

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 29, 1973.

There are published below the directives of December 19 and 21, 1972, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry in the United States of cotton and wool textile products in certain categories manufactured or produced in the Republic of China. The directive of December 19, 1972, amends the directive of November 14, 1972 (T.D. 72–324).

These directives were published in the Federal Register on December 23 and 29, 1972 (37 F.R. 28446 & 28774), by the Committee.

(343.3)

G. R. DICKERSON,
Assistant Commissioner,
Office of Operations.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 19, 1972.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20226

DEAR MR. COMMISSIONER:

This directive amends the directive issued to you on November 14, 1972, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of wool textile products produced or manufactured in the Republic of China and exported to the United States during the twelve-month period beginning October 1, 1972.

Under the provisions of the bilateral Wool and Man-Made Fiber Textile Agreement of December 30, 1971, as amended, between the Governments of the United States and the Republic of China, and in accordance with the procedures of Executive Order 11651 of March

3, 1972, you are directed to amend, effective as soon as possible, the levels of restraint established in the directive of November 14, 1972 for wool textile products as follows:

Category	*Twelve-Month Level of Restraint*[1]
111–125 (apparel)	3,990,500 square yards equivalent
101–110, 126, 128 and 131–132 (fabric, made-ups and miscellaneous)[2]	804,000 square yards equivalent

The actions taken with respect to the Government of the Republic of China, and with respect to imports of wool textile products from the Republic of China, have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely yours,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements and Deputy Assistant Secretary and Director, Bureau of Resources and Trade Assistance

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THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 21, 1972.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20226

DEAR MR. COMMISSIONER:

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of December 30,

[1] These levels have not been adjusted to reflect any entries on or after October 1, 1972.
[2] The textile category structure for wool textile products does not contain categories numbered 127, 129, or 130.

1971, between the Governments of the United States and the Republic of China, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective January 1, 1973 and for the twelve-month period extending through December 31, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 5/6, 9/10, 15/16, 18/19, 20/21, 22/23, 24/25, 26/27, 28/29, 30, 32, 34/35, 41/42, 43 and part of 62 (other knit shirts and blouses), 44, 45, 46/47, 50, 51, 52, 53, 54, 57, 59, 60, part of 62 (other knit wearing apparel), 63 and 64 produced or manufactured in the Republic of China, in excess of the following levels of restraint:

Category	*Twelve-Month Level of Restraint*
5/6	2,651,879 square yards
9/10	31,186,578 square yards
15/16	1,490,853 square yards
18/19	1,687,259 square yards
20/21	1,099,501 square yards
22/23	3,346,457 square yards
24/25	3,264,837 square yards
26/27	5,807,801 square yards (of which not more than 3,264,837 square yards may be in duck fabric [1])
28/29	2,074,967 pieces
30	2,699,613 pieces
32	402,389 dozen
34/35	303,852 pieces
41/42	139,839 dozen
43 and part of 62 (only T.S.U.S.A. Nos. 382.0002, 382.0605, and 382.0610)	102,883 dozen
44	26,997 dozen
45	16,199 dozen
46/47	10,901,847 square yards
50	219,569 dozen

[1] The T.S.U.S.A. Nos. for duck fabric are:

320.—01 through 04, 06, 08
321.—01 through 04, 06, 08
322.—01 through 04, 06, 08
326.—01 through 04, 06, 08
327.—01 through 04, 06, 08
328.—01 through 04, 06, 08

51	352,749 dozen
52	224,968 dozen
53	17,996 dozen
54	37,796 dozen
57	179,974 dozen
59	44,994 dozen
60	34,015 dozen
Part of 62 (all T.S.U.S.A. Nos. except those included in part of 62 combined in 43)	42,281 pounds
63	224,968 pounds
64	212,869 pounds

In carrying out this directive, entries of cotton textiles and cotton textile products in the above categories produced or manufactured in the Republic of China, which have been exported to the United States from the Republic of China prior to January 1, 1973, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods for the twelve-month period beginning January 1, 1972 and extending through December 31, 1972. In the event that the levels of restraint for the twelve-month period ending December 31, 1972 have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of December 30, 1971, between the Governments of the United States and the Republic of China, which provide in part that within the aggregate and applicable group limits, limits on specific categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on April 29, 1972 (37 F.R. 8802).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken wtih respect to the Government of the Republic of China and with respect to imports of cotton textiles and cotton textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the

implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely yours,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary and Director, Bureau of Resources and Trade Assistance

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(T.D. 73-39)

Cotton, wool and manmade fiber textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products and wool and manmade fiber textile products manufactured or produced in Hong Kong

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 30, 1973.

There is published below the directive of January 3, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the visa requirement for cotton textiles and cotton textile products and wool and manmade fiber textile products, manufactured or produced in Hong Kong.

This directive was published in the Federal Register on January 9, 1973 (38 F.R. 1145), by the Committee.

(343.3)

R. N. MARRA,
FOR G. R. DICKERSON,
Assistant Commissioner, Office of Operations.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

January 3, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20226

DEAR MR. COMMISSIONER:

Under the provisions of the bilateral Cotton Textile Agreement of

December 17, 1970, as amended, and the bilateral Wool and Man-Made Fiber Textile Agreement of January 6, 1972 between the Governments of the United States and Hong Kong, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective 30 days after publication of this letter in the Federal Register and until further notice, entry into the United States for consumption of cotton textiles and cotton textile products in Categories 1–64 and wool textile products in Categories 101–126, 128, and 131–132 and man-made fiber textile products in Categories 200–243, produced or manufactured in Hong Kong, and exported from Hong Kong to the United States on or after that date for which Hong Kong has not issued an appropriate Visa, fully described below. The Visa requirements, however, will become effective 60 days following the date of publication for all cotton, wool and man-made fiber textiles and textile products produced or manufactured in Hong Kong and exported from Hong Kong to the United States before that date.

The Visa will be comprised of: 1) a Certificate of Hong Kong Origin indicating the category or categories under which the textiles and textile products are classified; and 2) an export visa appearing as a stamped marking in blue ink on the front side of the Certificate of Hong Kong Origin. The export visa will be valid only if it bears the signature of an official authorized by the Hong Kong Government to issue such visa. Facsimile signatures of the authorized officials are enclosed along with facsimiles of the two documents comprising the Visa.

You are further directed to allow entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of cotton, wool, and man-made fiber textiles and textile products, produced or manufactured in Hong Kong and exported to the United States from Hong Kong, notwithstanding the designated shipment or shipments do not meet the aforementioned Visa requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on April 29, 1972 (37 F.R. 8802).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Hong Kong and with respect to imports of cotton, wool, and man-made fiber textiles and textile products from Hong Kong, have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore,

the directions to the Commissioner of Customs being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements and Deputy Assistant Secretary and Director, Bureau of Resources and Trade Assistance

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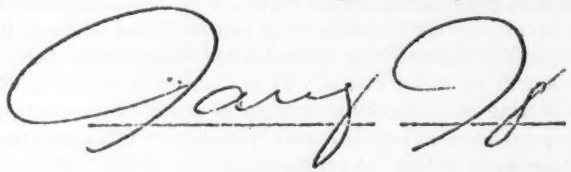
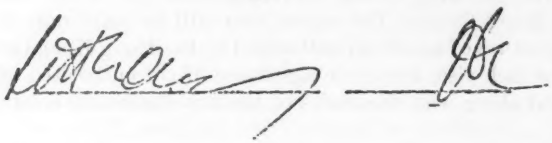
Name	*Specimen Signature and Initial*
TANG FONG Nai-kwan	
LAM HUNG Lai-cheung	
MAK LUI Kit-ming	

(T.D. 73-40)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 28, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to section 16.4, Customs Regulations (19 CFR 16.4).

Iran rial:
For the period January 15 through January 19, 1973, rate of $0.0128.

Philippine peso:
For the period January 15 through January 19, 1973, rate of $0.1460.

Singapore dollar:
For the period January 15 through January 19, 1973, rate of $0.3555.

Thailand baht (tical):
For the period January 15 through January 19, 1973, rate of $0.0478.

(342.211)

JAMES D. COLEMAN,
Acting Director,
Appraisement and Collections Divisions.

Decisions of the United States Customs Court

Protest Decisions

(C.D. 4400)

M. H. GARVEY CO. *v.* UNITED STATES

Toys—Fishing reels

The imported fishing reels were not sold separately but as part of a fishing kit, and evidence by plaintiff that the reels were sold as part of a play fishing kit used by children in play fishing rather than sport fishing is rebutted by testimony of defendant's well qualified witnesses who testified to the sale of articles of the quality of the imported fishing reels as fishing reels used in sport fishing, albeit perhaps, more by children than by adults. Since there is no evidence that imported fishing reels are by themselves toys, they are at best on this record parts of a fishing kit.

Parts of toys, excepted from classification headnote schedule 7, subpart E, headnote 1 (which provides that articles described in the toy provisions of subpart E (schedule 7) shall be classified in such provisions whether or not such articles are more specifically provided for elsewhere in the tariff schedules) are not excluded from specific provisions elsewhere in TSUS, i.e. TSUS item 731.20.

Held: Evidence fails to overcome the presumption and supporting evidence that, as a matter of fact, the imported articles are not toys but fishing reels which, imported separately, are solely or chiefly used as a part of an article, and that fishing reels are specifically provided for under TSUS item 731.20.

Protests 69/16642 and 69/27772 against the decision of the district director of customs at the port of Boston

[Judgment for defendant.]

(Decided January 16, 1973)

Walter E. Doherty, Jr., attorney for the plaintiff.

Harlington Wood, Jr., Assistant Attorney General (*Herbert P. Larsen*, trial attorney), for the defendant.

LANDIS, Judge: This case[1] involves merchandise imported from Japan which the manufacturer documented as an invoice of 100 "Cartons of Toys" each carton containing 150 articles described as "Jr. Metal Click Reels". The articles, recognizably fishing reels, were entered at Boston by plaintiff, M. H. Garvey Co., customhouse broker, for the account of the importer, New York Toy Corp. As required by law, on the customs form for so-called "consumption entry", plaintiff entered the articles as dutiable at 41.5 per centum ad valorem under the TSUS (Tariff Schedules of the United States) item 731.20 classification, fishing reels, valued not over $2.70 each.

Customs officials at Boston appraised and liquidated the entries "as entered" under TSUS item 731.20. Plaintiff's complaint in this case, however, alleges that the imported articles are "of a cheap, flimsy construction * * * incapable of serious use in the sport of fishing * * * chiefly used for the amusement of children" and asks the court to adjudge that the articles are not classifiable as fishing reels but as toys, and parts of toys, not specially provided for, dutiable under TSUS item 737.90 at 31 per centum ad valorem.

In the pertinent text of the tariff schedules, TSUS items 731.20 and 737.90 appear as follows:

[1] Two protests were consolidated for trial.

SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

Part 5.—Arms and Ammunition; Fishing Tackle; Wheel Goods; Sporting Goods, Games and Toys

* * * * * * *

Subpart B.—Fishing Tackle

Subpart B headnotes:

* * * * * * *

	Fishing reels and parts thereof:	
	Reels:	
731.20	Valued not over $2.70 each	41.5% ad val.
731.22	Valued over $2.70 but not over $8.45 each	$1.12 each
731.24	Valued over $8.45 each	13% ad val.
731.26	Parts	24% ad val.

* * * * * * *

Subpart E.—Models, Dolls, Toys, Tricks, Party Favors

Subpart E headnotes:

1. The articles described in the provisions of this subpart (except parts) shall be classified in such provisions, whether or not such articles are more specifically provided for elsewhere in the tariff schedules, but the provisions of this subpart do not apply to—

(i) doll carriages, doll strollers, and parts thereof (see part 5C of this schedule);

(ii) wheeled goods designed to be ridden by children, and parts thereof (see part 5C of this schedule); or

(iii) games and other articles in items 734.15 and 734.20, toy balls (items 735.09–.12), and puzzles and games in item 735.20 (see part 5D of this schedule).

2. For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults.

* * * * * * *

	Toys, and parts of toys, not specially provided for:	
737.80	Toys having a spring mechanism	37% ad val.
737.90	Other	31% ad val.

Plaintiff admits that the imported articles are valued not over $2.70 each. Qualifiedly, plaintiff further admits that the imported articles are fishing reels designed to be used with a fishing rod, line, and hook, in the pastime of fishing and that prior to the date of importation and at all subsequent times, merchandise of the same class or kind as the imported articles was used throughout the United States in attempting to catch fish. Plaintiff qualifies the latter admissions with the assertion that the imported articles are, however, of cheap, flimsy construction incapable of serious use in the art of fishing. Plaintiff denies that the imported articles are of a class or kind intended and chiefly used to catch fish asserting they are chiefly used for the amusement of children.[2]

On trial, plaintiff adduced the testimony of Mr. Herbert Rubin, president of New York Toy Corp., and moved in evidence the following, viz: an article (exhibit 1) representative of the imported articles; a fishing reel (exhibit 2), concededly of a kind used in sport fishing; a fishing reel, broken down to show the inside working gear mechanism (exhibits 3A and 3B), concededly of a kind used in sport fishing, and a photocopy of a letter (substituted for the original introduced into evidence on trial) from the Bureau of Customs to Mr. Herbert Rubin, New York Toy Corp., dated February 19, 1970, relevant to the classification and dutiable status of a sample of a fishing reel made in Japan (exhibit 4).[3]

The sum and substance of Mr. Rubin's testimony is that the imported articles are toys, that they are not the size or quality of fishing reels with gears used in sport fishing, that the articles have no gears "to play a fish with", that the articles are "part of a kid's toy, play fishing set" consisting of the reel, a "small clay model of a rod", hooks without points and sinkers, a little book, and some cotton string. The testimony is to the further effect that Mr. Rubin does not sell the articles separately but as a part of a play fishing set, that the articles are a 10 cent reel or toy, that he sells the fishing play set nationally to department stores that display them in their toy department and to toy stores, and that he has seen the set used by children for play fishing in the bathtub.

Mr. Rubin also testified that the letter he received from the Customs Bureau (exhibit 4) contained a ruling that the imported articles were a toy and that he had a similar federal ruling, going back to 1947,

[2] The admissions, qualifications, and denial were made upon defendant's request for admissions pursuant to the rules of this court. Rule 6.2.

[3] The Bureau opined that the sample (there is no evidence connecting the sample with the imported fishing reels) submitted "is a small flimsily constructed fishing reel which is incapable of being used seriously in the sport of fishing. It is believed to be an article chiefly used in the United States for the amusement of children" classifiable as a "toy" under TSUS item 737.90.

that articles of the kind imported, manufactured in the United States, were a toy and not subject to manufacturer's federal excise tax.

Defendant's first witness was Mr. Richard C. Wolff, a freelance outdoor writer on sports fishing. Mr. Wolff testified that he had written articles for "Outdoor Life", "Field & Stream", and "Sports Afield"; that he was formerly on the staff of Fishing World, and that he is a member of the Outdoor Writers Association of America. He stated that he was, at the time of trial, also on the staff of Guns & Ammo and a vice president of Garcia Corp., manufacturers of sports fishing tackle. His writing included a book then in print entitled "Fishing Tackle & Techniques" of which Mr. Wolff said he would guess about a million copies had been sold.

Mr. Wolff described the imported articles (exhibit 1) as a fishing reel with two side plates, a reel foot, three pillars, a spool, two handles and a click mechanism assembled by riveting to make a fishing reel. He had observed that kind of reel used by "kids and even beginning adults, take it out and try to go fishing with it". Mr. Wolff stated that he could fish with exhibit 1 and identified exhibit A in evidence as a fishing rod made by Garcia Corp. He demonstrated how the reel foot of exhibit 1 could be mounted or fitted in the reel set of exhibit A so that both, with proper line, are in "fishable condition". Exhibit 1, Mr. Wolff stated, would hold sufficient line to catch a reasonably large fish, and game fish. A fisherman, according to Mr. Wolff, could cast reasonably well with exhibit 1 because the spool rotates well. Mr. Wolff further testified that fishing rods and reels are sold in two ways, as a complete fishing kit with rod, reel, lines, lures and hooks, or separately so that the fisherman can pick and choose to suit his needs and pocketbook. He was familiar with articles such as or similar to exhibit 1 which were sold separately, and identified one such article in the Horrocks-Ibbotson Company, Utica, New York, 1969 fishing catalog, page 10, HI No. 1841, in evidence (exhibit B), as a fishing reel which "in every outward appearance" is identical to exhibit 1.

Exhibit 1, Mr. Wolff stated, is known in fishing circles as a "bait casting reel" (without the gear mechanisms of exhibits 3A and 3B) of a kind with a direct drive to the spool axle without gears, and that he had used such a reel as "a kid" trying to catch, quite successfully, "sunnies", "catfish", and "perch". As recently as the last five years, he said, he had observed other people use a fishing reel such as exhibit 1 trying to catch fish.

On cross-examination, Mr. Wolff testified that exhibit A (fishing rod) sells for about $10. He explained that selling a fishing set is a matter of what a customer is willing to pay and the stock in the store; that, in terms of what a customer wanted to spend, he could sell exhibit A with exhibit 1 (fishing reel), if that was all he had in stock,

but on balance, as between buying a cheaper rod or cheaper reel, if he were in a position to do so, he would advise one to buy a cheaper rod.

There was additional testimony for defendant from Mr. George W. Thilberg, regional conservation officer of Fish & Wild Life for the New York State Conservation Department, and Mr. Stephen C. Netherby, assistant editor of Field & Stream Magazine (exhibit C), the qualifications of all of defendant's witnesses having been conceded. The testimony of Messrs. Thilberg and Netherby materially and relevantly corroborates the testimony of Mr. Wolff with respect to the sale and use of articles of the kind imported, namely, exhibit 1, for sport fishing.

Both sides, in their briefs, cite the legislative history of schedule 7, part 5, subpart B (fishing tackle), subpart D (sporting equipment), subpart E (toys),[4] and the application of the "junior edition" principle relied on in *New York Merchandise Co., Inc.* v. *United States*, 62 Cust. Ct. 38, C.D. 3671, 294 F. Supp. 971 (1969),[5] appeal dismissed, to the facts in this case. However, as the "junior edition" principle cannot serve to sustain plaintiff's claim but only to negative it, if applicable, I eschew debate of the "junior edition" principle, in view of the result I have reached holding that plaintiff has failed to overcome the presumption of correctness attaching to the customs classification of the imported articles as fishing reels dutiable under TSUS item 731.20.[6]

The evidence most favorable to plaintiff is to the effect that plaintiff includes the fishing reels in a fishing kit which it sells nationally to toy stores and department stores and that such stores sell the fishing kit in their toy section; that in Mr. Rubin's experience the fishing reels were used with the fishing kit chiefly by children in play fishing and not sport fishing, and that the imported fishing reels are not of the quality of fishing reels having gears and use in sport fishing.

However, not every article sold by a toy store or in the toy department of a store is necessarily a toy for tariff purposes. See, *United*

[4] Tariff Classification Study, Schedule 7, pages 273, 279, and 288; Tariff Classification Study, First Supplemental Report, page 80.

[5] The articles in *New York Merchandise* were vinyl junior baseball gloves classified by customs as toys under TSUS item 737.90, and *inter alia* claimed to be properly classifiable as baseball equipment under TSUS item 734.55. The gloves were established to be suitable and chiefly used by children, particularly below the age of eight in a regular or organized game of baseball. Following the principle of numerous cited cases, "that a 'junior edition' of a larger, more expensive article is classifiable under the same provision as the more expensive article, if the cheaper article performs the same function on a smaller scale" (*New York Merchandise*, at page 42), and concluding that the TSUS legislative history (cited by both sides here) indicated an intent to carry over the "junior edition" principle into the tariff classification of sports equipment, as opposed to toys, this court held the vinyl baseball gloves properly classifiable not as toys, but under TSUS item 734.55 as baseball equipment.

[6] Customs is presumed to have correctly found all the facts necessary to support the classification as fishing reels. *Novelty Import Co., Inc.* v. *United States*, 53 CCPA 28, C.A.D. 872 (1966).

States v. *Bernard, Judae & Co. et al.* 13 Ct. Cust. Appls. 306, 308, T.D. 41230 (1925). Plaintiff's testimony that the imported articles are chiefly used by children in play fishing, as opposed to sport fishing, is rebutted by the testimony of defendant's well qualified witnesses who testified to the sale of articles of the quality of the imported fishing reels (exhibit 1), as fishing reels used, albeit perhaps, more by children than by adults, in sport fishing.

Plaintiff's evidence that the imported fishing reels are included in a fishing kit sold nationally must be weighed to establish that, in the condition imported, the fishing reels are intended to be used as part of a fishing kit. Cf. *Charles Garcia & Co., Inc.* v. *United States*, 45 CCPA 1, C.A.D. 663 (1957). There is no evidence that the imported fishing reels are themselves toys, aside from their use with a fishing kit of sorts. The fishing kit is not in exidence. Assuming, without deciding, that the fishing kit is a toy, the imported fishing reels imported separately are at best a part of the fishing kit and, therefore, separately dutiable. *Charles Garcia & Co., Inc.* v. *United States*, *supra*. Subpart E, headnote 1, as noted earlier, provides as follows:

> 1. The articles described in the provisions of this subpart (except parts) shall be classified in such provisions, whether or not such articles are more specifically provided for elsewhere in the tariff schedules * * *.[7]

Parts of toys it will be observed are excepted from the headnote and are, therefore, not excluded from specific provisions elsewhere in TSUS.[8]

Fishing reels, separately imported, are specifically provided for in TSUS item 731.20. Plaintiff, in short, however, has placed almost entire reliance on the use by children and the "amusement" aspect of the imported fishing reels in an effort to support their claimed classification as "toys". In doing so, it has failed to negate the presumption and supporting evidence that, as a matter of fact, the imported articles are fishing reels; that, imported separately, the fishing reels are solely or chiefly used as a part of an article; and that fishing reels are specifically provided for under TSUS item 731.20.

The claim for classification as toys or parts of toys under TSUS item 737.90 is overruled.

Judgment will be entered accordingly.

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[7] Cf. *United States* v. *Topps Chewing Gum, Inc.*, 58 CCPA 157, 158, C.A.D. 1022, 440 F. 2d 1384 (1971).

[8] The tariff classification of parts of toys is, therefore, subject to the statutory rule that:

> a provision for "parts" of an article covers a product solely or chiefly used as a part of such article, ***but does not prevail over a specific provision for such part.*** [Emphasis added. TSUS General Headnotes and Rules of Interpretation, 10(ij).]

(C.D. 4401)

GREEN GIANT CO. *v.* UNITED STATES

Vegetables

Blanched frozen mushrooms claimed to be prepared or preserved under item 144.20, Tariff Schedules of the United States, *held* for tariff purposes to be fresh mushrooms under item 144.10, Tariff Schedules of the United States, as classified.

Blanched vegetables are not prepared in the tariff sense. *Border Brokerage Company, Inc.* v. *United States*, 60 Cust. Ct. 487, C.D. 3437, 284 F. Supp. 806 (1968); *North Pacific Canners and Packers* v. *United States*, 64 Cust. Ct. 551, C.D. 4034 (1970).

Freezing is not a permanent preservative and hence freezing is not considered a preservation. Cases reviewed.

Legislative history relating to rate of duty on "drained weight" establishes intent to cover canned mushrooms.

Court No. 71-4-00011

Port of New York

[Judgment for defendant]

(Decided January 17, 1973)

Glad & Tuttle (*Edward N. Glad* of counsel) for the plaintiff.

Harlington Wood, Jr., Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

FORD, Judge: By this action, the court has before it for determination the proper classification of certain whole frozen mushrooms which had been blanched prior to freezing. Said merchandise was classified as fresh mushrooms under the provisions of item 144.10, Tariff Schedules of the United States, and assessed with duty at the rate of 5 cents per pound plus 25 per centum ad valorem.

The Tariff Schedules of the United States provisions covering mushrooms provide for fresh, dried or otherwise prepared or preserved. By the pleadings in this action, the parties have agreed that said mushrooms are not dried. Accordingly, plaintiff contends the proper classification of frozen mushrooms is provided for under item 144.20, Tariff Schedules of the United States, as otherwise prepared or preserved.

The pertinent portions of the statutory provisions involved provide as follows:

	Mushrooms, fresh, or dried, or otherwise prepared or preserved:	
144.10	Fresh	5¢ per lb.+25% ad val.
144.12	Dried	* * *
144.20	Otherwise prepared or preserved	3.2¢ per lb. on drained weight+10% ad val.

The record in this case consists of the testimony of six witnesses called on behalf of plaintiff and seven exhibits. Defendant introduced the testimony of one witness.

The processing of the mushrooms both abroad and in the United States is clearly set forth and is not disputed. The freshly picked mushrooms are brought to the receiving platform of the freezing plant where they are weighed and inspected for quality. They are then placed in a wash tank. The mushrooms are then flumed to an underwater grader which separates them according to size after which the stems are trimmed. They are then conveyed to a chilled water tank which holds the mushrooms for the blanching process.

The blanching process is to retard spoilage by killing bacteria and deactivating enzymes as well as to maintain the product as close to its raw state as possible. The blanching is accomplished in a water blancher which is approximately 20 inches in width and 25 feet in length with a depth of 2 feet. The mushrooms are conveyed through the blancher in aluminum perforated containers. The water in the blancher is heated with live steam and kept at a rolling boil. The temperature is kept at 210° Fahrenheit and the process takes 80 to 95 seconds at which time the containers are removed. There is a shrinkage of 10 to 13 percent of the total weight as a result of the blanching.

The product is then discharged into a flume of refrigerated water kept at 40° Fahrenheit and then spills onto a stainless steel net for a cursory inspection. After inspection, it is again spilled into a refrigerated flume which transports it to the entrance of the freezing tunnel. Prior to entering the tunnel, it is placed on a dewatering belt which permits the removal of all water not naturally contained in the product. The belt conveying the merchandise through the freezing tunnel is 3 feet wide and 48 feet long, and the temperature in the tunnel is maintained at a low of minus 45° and a high of minus 34°. The product is conveyed through the tunnel in approximately 8 minutes. The mushrooms are then individually frozen. They are then placed in polyethylene lined shipping containers, weighed, sealed and sent to a storage area which is maintained at minus 10° Fahrenheit. Samples are taken

for inspection in the storage area. The mushrooms are not packed in any chemical substance nor is salt or sugar added.

The frozen mushrooms are then transported in an insulated truck for transportation to the cold-storage area of the vessel. Upon receipt in the plant in the United States, the mushrooms are dumped from the shipping container into an automatic filler which fills individual pouches. Sauce is then added to the pouches by hand and they are then sealed, placed into a carton and returned to the freezer. This processing of the frozen mushrooms takes only a few minutes.

The freezing process is used to prolong the shelf life of the product which is then 1 to 3 years. The shelf life of fresh mushrooms kept at 35° Fahrenheit is 5 to 7 days while at room temperature it is approximately 24 hours.

Frozen mushrooms must be prepared according to the directions on the carton while fresh mushrooms may be used raw. The frozen mushrooms are prepared by the consumer while still frozen. If allowed to thaw, they would "weep," causing loss of liquid, and turn darker. Blanching is a process similar to pasteurization of milk. Pasteurized milk is considered fresh milk while unpasteurized milk is considered raw milk.

Fresh mushrooms are not washed as the shelf life is reduced when washed. The texture of a fresh mushroom is firm while a blanched frozen mushroom has a rubbery texture. Canned mushrooms are blanched, packed in water, salt and ascorbic acid and are thoroughly cooked. Four of the witnesses called on behalf of plaintiff believed a blanched frozen mushroom does not fall within the meaning of a fresh mushroom because it has been altered from its natural state.

Schedule 1, part 8 of the Tariff Schedules of the United States, is the tariff schedule for vegetables. Subpart A provides classification for fresh, chilled or frozen vegetables with no differentiation in rate between the three designated conditions; nor is there a distinction in classification of the vegetables provided for in subpart B and designated as "Vegetables, Dried, Desiccated, or Dehydrated." Subpart C covers vegetables packed in salt, in brine, pickled or otherwise prepared or preserved, while subpart D provides for mushrooms and truffles, fresh, dried or otherwise prepared or preserved. There is, for the most part, a distinction in classification under subparts C and D depending upon the designated condition of the vegetables involved.

Insofar as vegetables are concerned, at least for tariff purposes, there would appear to be no distinction between fresh, chilled or frozen. This may very well be due to the numerous decisions involving frozen and blanched products which Congress was presumed to be aware at the time of the enactment of the Tariff Schedules of the

United States. The re-enactment of the identical language providing for mushrooms in the Tariff Acts of 1922, 1930, and the Tariff Schedules of the United States is an indication of the lack of distinction between fresh and frozen mushrooms.

The question of blanching was considered by this court as an essential step in the process of freezing and thus not a process which would render the vegetables prepared or preserved. *Border Brokerage Company, Inc.* v. *United States*, 60 Cust. Ct. 487, C.D. 3437, 284 F. Supp. 806 (1968), involving blanched frozen vegetable greens and *North Pacific Canners and Packers* v. *United States*, 64 Cust. Ct. 551, C.D. 4034 (1970), involving blanched frozen onions. These cases in addition to determining that blanching did not place the vegetables in the category of prepared or preserved also held the freezing likewise did not place them in said category.

The most frequently cited cases on the question of whether freezing constitutes preserving are *John A. Conkey & Co.* v. *United States*, 16 Ct. Cust. Appls. 120, T.D. 42766 (1928); *United States* v. *Conkey & Co.*, 12 Ct. Cust. Appls. 552, T.D. 40783 (1925); and *Moscahlades Bros.* v. *United States*, 6 Ct. Cust. Appls. 399, T.D. 35973 (1915).

In the *Moscahlades* case, certain fish roe which was classified as preserved under paragraph 216, Tariff Act of 1913, was held not to be preserved when it is salted enough to preserve it in the winter but not during the summer. The application of natural or artificial cold to arrest decomposition during the various weather changes does not constitute preservation.

In *United States* v. *Conkey & Co.* (T.D. 40783), *supra*, frozen lamb was classified as fresh lamb under the provisions of paragraph 702, Tariff Act of 1922, and claimed to be properly subject to classification as meats, prepared or preserved, under paragraph 706 of said act. The court therein concisely set forth in its headnotes the principles involved in that case which are as follows:

> It is the common acceptance of the word "preserved," when applied to meat, that it has been so processed that its preservation is of permanent character. This court, and other courts, have frequently held that articles of importation, referred to in the tariff statutes as preserved, have had something more done to them to preserve them than merely to arrest change and decomposition while in transit. So frozen meat is not "preserved" within the meaning of that term in paragraph 706, tariff act of 1922.
>
> * * * * * * *
>
> When used in the tariff acts, the word "prepared" is sometimes used synonymously with preserved, but, in a general sense, it implies that the fresh or raw material has undergone certain mechanical changes, such as cutting, slicing, grinding, mashing, mixing, etc., and usually implies that it has been advanced toward the

> condition in which it is used, and frequently such preparation either aids or accomplishes preservation. Frozen meat can not be regarded as "prepared," within the meaning of that word in paragraph 706, tariff act of 1922.

From the foregoing, it is well established by judicial interpretation that neither blanching, which is merely a necessary step for freezing, nor the freezing itself, which is not permanent, constitutes preparation or preservation. Accordingly, blanched frozen mushrooms are not for tariff purposes prepared or preserved.

In an action such as this, the plaintiff has a twofold burden of negating the classification and establishing the correct classification. While plaintiff has established certain differences in the use of frozen mushrooms compared to fresh mushrooms, it has failed to establish its claimed classification. The modern trend for frozen foods does, in my opinion, emphasize the distinction between fresh and frozen foods. However, the remedy for such a situation is legislative and not judicial. The court can only interpret the law as written.

A further indication that the claimed classification is erroneous is the rate of duty assessed by the tariff schedules. The specific rate of 3.2 cents per pound is on the "drained weight." This language appears to have been adopted for the first time with respect to mushrooms in the Tariff Act of 1930. The Supplement to Tariff Information on Items in Tariff Bill of 1930, which was compiled by the Tariff Commission, and printed for the use of the Finance Committee, United States Senate and the Committee on Ways and Means, House of Representatives (1930), makes the following comment at page 333:

> *Rates and comment.*—In the Senate bill mushrooms were given a compound of 10 cents per pound plus 45 per cent ad valorem, the "10 cents per pound" to be assessed under the "drained weight" in the case of canned mushrooms. The drained weight of a can of mushrooms is just half the entire weight of the contents, since by universal commercial practice one-half of a can of mushrooms is liquid and one-half mushrooms. Ten cents per pound on the drained weight is, therefore, equivalent to 5 cents per pound on the entire contents.
>
> Mushrooms shrink approximately 50 per cent in canning, so that 1 pound of fresh mushrooms is required to make one-half pound of canned mushrooms (drained weight).

It is therefore apparent that the term "prepared or preserved" mushrooms in the Tariff Act of 1930 covered only canned mushrooms. The utilization of this language in the Tariff Schedules of the United States must be presumed to be the same. Where there is no liquid to be drained in frozen mushrooms, such provision is not applicable.

In view of the foregoing, I find for defendant.

Judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *January 22, 1973*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/71	Rao, J. January 15, 1973	John Dritz & Sons, Inc.	67/67594	Item 389.70 20%	Item 256.90 17.5%	John Dritz & Sons, Inc. v. U.S. (C.D. 3231)	San Francisco Paper cord sewing baskets
P73/72	Rao, J. January 15, 1973	John Dritz & Sons, Inc.	67/72827, etc.	Item 389.70 20%	Item 256.90 17.5%	John Dritz & Sons, Inc. v. U.S. (C.D. 3231)	New York Paper cord baskets
P73/73	Rao, J. January 15, 1973	John Dritz & Sons, Inc., et al.	67/83925, etc.	Item 389.70 20%	Item 256.90 17.5%	John Dritz & Sons, Inc. v. U.S. (C.D. 3231)	San Francisco Paper cord baskets

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/74	Rao, J. January 15, 1973	Everbest Jewelry Corp.	59/7781, etc.	Par. 371 30%	Par. 353 13¾%	Enlite Products Co. et al v. U.S. (C.D. 3682)	New York Battery operated lanterns
P75/75	Rao, J. January 15, 1973	Everbest Jewelry Corp.	59/7781–S, etc.	Par. 371 30% (items marked "A", "C" and "D")	Par. 353 13¾% (items marked "A") Par. 1537(b) 12½% (items marked "C") Par. 353 11½% (items marked "D")	Enlite Products Co. et al. v. U.S. (C.D. 3682) (items marked "A") Sherwin International, Inc. v. U.S. (Abs. 69382) (items marked "C") Agreed statement of facts (items marked "D")	New York Battery operated lanterns (items marked "A") Horns, in c.v. of india rubber (items marked "C") Battery operated sirens, in c.v. of metal, not dedicated to use with bicycles (items marked "D")
P73/76	Watson, J. January 15, 1973	Rene D. Lyon Co., Inc.	68/14418, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.
P73/77	Maletz, J. January 15, 1973	M. Pressner & Co., Inc.	70/12909	Item 737.90 31%	Item 737.65 16%	Agreed statement of facts	New York "Hand Buzzer", not chiefly used for amusement of children or adults: used to put "shocked" person at a disadvantage

P73/78	Re, J. January 15, 1973	De Vahni International, Inc.	70/3420, etc.	Item 700.41 16% or 14%	Item 700.35 9%	De Vahni International, Inc. v. U.S. (C.D. 4196)	New York Sandals
P73/79	Re, J. January 15, 1973	Hill House et al.	64/19311, etc.	Item 222.42 34%, 32% or 30%	Item 727.10 18%, 17.5% or 17%	Agreed statement of facts	Philadelphia Furniture of unspun fibrous vegetable materials, of rattan or palm leaf
P73/80	Watson, J. January 16, 1973	Louis Schneider Corp.	66/29629, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	New York Artificial flowers, etc.
P73/81	Rao, J. January 17, 1973	Flare Import Corp.	63/15391	Par. 371 30%	Par. 397 19%	Sherwin International, Inc. v. U.S. (Abs. 69382)	New York Lucky Horns, Bulb Horns, Bugle Horns, Accordion Horns or Bicycle Horns, all non-electric, hand operated, in c.v. of iron or steel
P73/82	Ford, J. January 17, 1973	Morris Friedman	62/4274, etc.	Par. 397 22½%, 21%, 20%, 19%, 17% or 15%	Par. 339 15%, 14%, 13½%, 12½%, 11% or 10%	Ignaz Strauss & Company, Inc. v. U.S. (C.A.D. 923)	Philadelphia Candleholders, candlesticks, menorahs, lamps, and candelabras in c.v. of brass (household utensils)
P73/83	Ford, J. January 17, 1973	Intra-Mar Shipping Corp.	66/70740	Par. 1301 50%	Par. 1301 22½% but not less than 25¢ per lb.	Chester Tricot Mills, Inc. v. U.S. (C.D. 2695)	New York Nylon yarn

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/84	Newman, J. January 17, 1973	Amthor Imports et al.	65/25113, etc.	Item 653.40 19%	Item 657.09 3%	Albert Kessler & Co. et al. v. U.S. (C.D. 3624)	San Francisco Cast iron lanterns or garden ornaments
P73/85	Newman, J. January 17, 1973	Linmark International Corp. et al.	66/35965–S, etc.	Par. 1531/1559(a) or 1531 20%	Par. 353 12½%	Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases (entireties with radios)
P73/86	Rao, J. January 18, 1973	S. G. B. Epic Co., Inc.	72-5-00980	Item 657.20 13%	Item 664.10 6%	Judgment on the pleadings	New York Vertical steel shores
P73/87	Ford, J. January 18, 1973	Longs Drug Stores et al.	63/16873, etc.	Par. 353 15% (items marked "B") Par. 1531 or 1531/1559(a) 20% (items marked "C")	Par. 353 13¾%, 12½% or 11⅛% (items marked "B") Par. 353 12½% (items marked "C")	Midland International Corporation v. U.S. (C.D. 3217); North American Foreign Trading Corp. v. U.S. (C.D. 3968) (items marked "B") Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "C")	San Francisco Earphones, not subminiature, having an essential electrical feature (items marked "B") Cases imported with radios (entireties) (items marked "C")
P73/88	Ford, J. January 18, 1973	Quon Quon Company	59/3127, etc.	Par. 397 22½%, 21%, 20%, 19% or 17%	Par. 339 12½% or 11%	Ignaz Strauss & Company, Inc. v. U.S. (C.A.D. 923 and C.D. 3627)	Los Angeles Brass candlesticks, candelabra, etc.

P73/89	Ford, J. January 18, 1973	Siemens America, Inc.	68/30379, etc.	Item 685.90 15½%, 14% or 12%	Item 687.60 11%, 10% or 8½%	Agreed statement of facts	New York Electronic tubes, other than television picture tubes or X-ray tubes
P73/90	Richardson, J. January 18, 1973	Tempo Graphic Arts, Inc.	67/26286, etc.	Item 274.70 8.5%	Item 805.00 Free of duty	Agreed statement of facts	New York American goods returned (photographic films)
P73/91	Newman, J. January 18, 1973	Arrow Trading Co.	66/8493-S	Par. 353 15% (items marked "E") Par. 1531 or 1531/1559(a) 20% (items marked "L")	Par. 353 13¾% (items marked "E") Par. 353 12½% (items marked "L")	Agreed statement of facts (items marked "E"). Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977) (items marked "L")	New York Earphones (articles having an essential electrical feature) (items marked "E") Radio cases (entireties with radios) (items marked "L")
P73/92	Newman, J. January 18, 1973	Fortune Star Products Co. et al.	66/20575-S, etc.	Par. 1531/1559(a) or 1531 20%	Par. 353 12½%	Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases (entireties with radios)
P73/93	Newman, J. January 18, 1973	Albert Kessler & Co.	65/6337, etc.	Item 653.40 19%	Item 657.09 3%	Albert Kessler & Co. et al. v. U.S. (C.D. 3624)	San Francisco Cast iron lanterns or garden ornaments
P73/94	Re, J. January 18, 1973	World Famous Sales Co.	69/2039	Item 207.00 16¾%	Item 727.35 10.5%	Judgment on the pleadings	Portland, Oreg. Gunracks
P73/95	Re, J. January 18, 1973	World Famous Sales Co.	69/2040	Item 207.00 16¾%	Item 727.35 10.5%	Judgment on the pleadings	Portland, Oreg. Gunracks

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/4	Re, J. January 16, 1973	Atkins, Kroll & Co., Ltd., et al.	R64/16863, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R73/5	Re, J. January 16, 1973	Balfour Guthrie & Co., Ltd., et al.	R60/9361, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R73/6	Re, J. January 16, 1973	Getz Bros. & Co. et al.	R58/27196, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R73/7	Re, J. January 16, 1973	Pacific Woods Products Co. et al.	R60/17782, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood

R73/8	Ford, J. January 17, 1973	International Knitting Machines Corp.	R70/2075, etc.	Foreign value.	87,000; 102,060; 102,000 (Pesetas), respectively, for each knitting machine, items HLJ; DL; HLJ with transfer attachment, plus $170.50 per machine for costs, charges and expenses for placing machines in condition packed ready for shipments to the U.S.	International Knitting Machines Corp. et al. v. U.S. (R.D. 11663)	New York Flat bed and flat V-bed knitting machines
R73/9	Re, J. January 17, 1973	Balfour, Guthrie & Co., Ltd., et al.	R59/10793, etc.	Export value: Net appraised value less 7¼% net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood, other than birch plywood
R73/10	Re, J. January 17, 1973	Watson Hardwood Plywood Corp. et al.	R59/4217, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Los Angeles Japanese plywood
R73/11	Re, J. January 18, 1973	Hurricane International	R68/2896, etc.	Export value: Appraised value less charges identified on each invoice as drayage and lighterage	Not stated	Agreed statement of facts	San Francisco Furniture

Appeals to United States Court of Customs and Patent Appeals

APPEAL 5527.—S. Y. Rhee Importers v. United States.—INFLATABLE ARTICLES—GREETING CARDS—TOYS—TSUS.

In this case merchandise consisting of polyvinyl inflatable articles (inflated by mouth in the manner that plastic beach balls are inflated), with humorous sayings thereon, was assessed at 28 percent ad valorem under item 737.90, Tariff Schedules of the United States, as toys, not specially provided for. Plaintiff claimed that the articles of merchandise were properly dutiable at 12 percent under item 274.05 as greeting cards or, alternatively, at 10 percent under item 790.39 as inflatable articles, not specially provided for. The Court held that plaintiff failed to overcome the presumption of correctness attaching to the customs classification as "toys" under item 737.90 and overruled the claims under items 274.05 and 790.39. It is claimed that the Customs Court erred in not finding and holding that the merchandise is properly dutiable as claimed under item 274.05 or item 790.39, *supra;* in not excluding the testimony of defendant's expert witness who was not qualified to express an opinion on the matters herein; and in failing to distinguish the merchandise which is the subject of this case from that the subject of *United States* v. *Topps Chewing Gum, Inc.*, 58 CCPA 157, C.A.D. 1022 (1971). Appeal from C.D. 4391.

APPEAL 5528.—United States v. Corpus Company et al.—SHIP REPAIRS, DUTY ON COST OF—OCEANOGRAPHIC RESEARCH VESSELS—VESSELS DOCUMENTED TO ENGAGE IN FOREIGN TRADE—TARIFF ACT.

In this case, customs officials assessed duty at the rate of 50 percent ad valorem under the provisions of section 466, Tariff Act of 1930, on the cost of the repairs made in foreign ports on four oceanographic research vessels owned by plaintiffs-appellees. Section 466 provides that a repair duty is required to be exacted "upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade." Plaintiffs claimed that the 50 percent repair duty provided in section 466 did not apply to the vessels in question since they were neither engaged in, nor intended to be engaged in foreign trade and sued to recover the duties that they maintained were illegally levied and exacted. The Customs Court determined that although the vessels were registered, they did not engage in foreign trade nor were they intended to do so and, therefore, they were not documented to engage in foreign trade within the meaning of section 466. The Court granted plaintiffs' claims for recovery of the duties paid.

It is claimed that the Customs Court erred in finding and holding that the cost of repairs made upon the subject vessels at foreign ports are not dutiable under section 466, Tariff Act of 1930; in finding and holding that oceanographic research vessels are, *per se*, without the scope of section 466; in finding and holding that actual use or employment of a vessel is determinative of the applicability of section 466; in not finding and holding that the intendment of section 466 was to include therein all vessels documented under the laws of the United States to engage in the foreign or coasting trade; in finding and holding that the Oceanographic Research Vessels Act, 79 Stat. 424, evinces a legislative intent in section 466 to exclude oceanographic research vessels therefrom; in not finding and holding that the legislative history of Pub. L. 91–654, amending section 466, subsequent to the entries at bar, evinces the prior inclusion of oceanographic research vessels, documented under the laws of the United States to engage in the foreign or coasting trade, under section 466, Tariff Act of 1930. Appeal from C.D. 4390.

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *February 1, 1973.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[337–L–56]

GOLF GLOVES

Notice of complaint received

The United States Tariff Commission hereby gives notice of the receipt on November 8, 1972, of a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), filed by Anthony J. Antonious and Ajac Glove Corp., both of Ellicott City, Maryland, alleging unfair methods of competition and unfair acts in the importation and sale of golf gloves which are embraced within the claims of U.S. Patent No. 3,588,917 owned by the complainants. Questor Corp., P. O. Box 965, Toledo, Ohio 43694; Leonard Cecil, 5644 Bent Branch Road, Bethesda, Maryland 20016; and O. F. Mossberg & Sons, Inc., P.O. Box 497, North Haven, Connecticut 06473 have been named as either importing or offering for sale the subject product.

In accordance with the provisions of section 203.3 of its Rules of Practice and Procedure (19 C.F.R. 203.3), the Commission has initiated a preliminary inquiry into the issues raised in the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so whether the Commission should recommend to the President the issuance of a temporary exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York office of the Tariff Commission located in room 437 of the Customhouse.

Information submitted by interested persons which is pertinent to

the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than February 20, 1973. Extensions of time for submitting information will not be granted unless good and sufficient cause is shown thereon. Such information should be sent to the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C. 20436. A signed original and nineteen (19) true copies of each document must be filed.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued January 22, 1973.

[TEA-W-175]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers and former workers of the Webster, Massachusetts, and North Grosvenor Dale, Connecticut, plants of the Bates Shoe Division of Wolverine Worldwide, Inc., Rockford, Michigan, the United States Tariff Commission, on January 22, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for men and boys (of the types provided for in items 700.26, 700.27, 700.29, and 700.35 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register.*

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued January 22, 1973.

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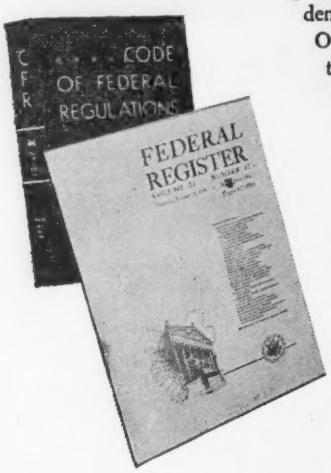

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